

## Employment and Staffing

### Technician Employment

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**Summary of Changes.** This regulation establishes policies, responsibilities, and procedures governing the employment through the California National Guard Military Technician program.

**Applicability.** California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and California Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over technician personnel management.

**Proponent and Exception Authority.** The proponent of this regulation is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Office of the Adjutant General, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of the regulation is Army - A and Air Force - F.

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#### 1. Purpose.

This technician personnel regulation establishes policies, responsibilities, and procedures governing employment through the National Guard Military Technician program. It provides principles, regulatory guidance, and instruction for National Guard military technician employment and placement programs and actions.

#### 2. References.

- a. Title 32 United States Code, Section 709 Technicians: Employment, Use, Status; as amended.
- b. Public Law 90-486, National Guard Technician Acts of 1968, August 13, 1968.
- c. Senate Report No. 1446, National Guard Technician Act of 1968, July 22, 1968.
- d. US Civil Service Commission Letter to CNGB, dated November 18, 1968.
- e. Title 10 United States Code, Chapter 1011, National Guard Bureau.
- f. Title 10 United States Code, Section 10216, Military Technician Dual Status.

- g. Title 10 United States Code, Section 10217, Non-Dual Status Technicians.
- h. Title 5 United States Code, Part III, Subpart B-Employment and Retention.
- i. Title 5 Code of Federal Regulations, Chapter I, Office of Personnel Management.
- j. Department of Defense Directive 1400.25, DoD Civilian Personnel Management System, November 25, 1996.

### **3. Statutory Appointment Authority.**

a. The Secretary of the Air Force and/or Secretary of the Army grants The Adjutant General authority to employ and administer National Guard Military Technicians (dual status and non-dual status) as Federal employees in accordance with 32 USC 709(d). This authority consists of the appointment of National Guard technicians as Federal employees and the authority to convert, promote, reassign, change to lower grade, suspend, furlough, reduce pay or separate, in accordance with appropriate regulations.

b. The Adjutant General has delegated this authority to the Human Resource Officer. This permission is the administrative authority necessary to carry out legal and program responsibility for the National Guard Military Technician workforce.

### **4. Responsibilities.**

a. The Adjutant General (TAG). Exercise delegated responsibility from the Secretaries of the Air Force and Army to “employ and administer the technicians authorized by this section” (2 U.S.C. 709(d)). The Adjutant General has the authority and flexibility to plan programs to meet mission requirements within the context of 32 U.S.C. 709, Technician Personnel Regulation(s) and where applicable, Title 5 United States Code.

b. Human Resources Officer (HRO). On behalf of The Adjutant General, the HRO provides administration of technician employment programs within their respective states. The HRO has the responsibility for managing and administering programs within the framework of statutory and regulatory authorities, and educating supervisors and managers on the effective use of the various programs.

c. Supervisors and Managers. Have the responsibility to ensure that laws, regulations, guidelines and instructions are implemented and properly applied to all actions taken. Supervisors are expected to comply with the philosophy and policy of the California National Guard.

### **5. General.**

a. The basic requirement for technician employment codified in Title 32 United States Code, Section 709, requires a technician be a member of the National Guard and hold the military grade appropriate to the position. Congress also recognized that certain full-time positions did not need to be filled by members of the National Guard. The capability to address this need was included in the original Act by providing authority for the appropriate Secretary (or designee) to except certain technician positions from the dual-status requirement.

b. Dual Status Technicians. When Congress enacted the National Guard Technician Act of 1968, its intent was to recognize the military aspects of the Guard and its mandate was to increase the effectiveness and efficiency of the Air Guard and the Army Guard in fulfilling their respective federal military missions. Dual Status Technicians serve concurrently in three different ways:

- (1) Performing full time civilian work in their units.
- (2) Conducting or accomplishing military training and duty in their units.
- (3) Are required to be available to enter active federal service at any time their units are called.

c. A person employed as a Dual Status (DS) military technician in the National Guard must meet each of the following requirements:

- (1) Be a military technician (dual status) as defined in Title 10 United States Code, Section 10216.
- (2) Hold membership in the National Guard.
- (3) Hold the military grade specified for the position.
- (4) While performing duties as a military technician, wear the appropriate uniform.

d. Non-Dual Status Technicians. The concept of the National Guard technician program is all positions are to be filled by dual status military technicians. When the role and duties of a particular position provide a valid basis for not filling the position with a dual-status military technician, or when there is no comparable military occupation, that position may be designated for fill by a non-dual status technician (*only*).

### **6. Discretion in Filling Vacancies.**

National Guard positions at all grade levels are filled based on merit and qualifications. The HRO may fill any position either by competitive appointment or by noncompetitive selection of a present or former Federal employee, in accordance with National Guard and civil service regulations. Discretion will be exercised in all personnel actions, selections made on the basis of merit and fitness, without regard to political or religious

affiliations, marital status, or race. Management officials with the authority to select or recommend selection are expected to be fully involved in developing evaluation criteria, identifying areas of consideration, identifying appropriate recruitment sources, incentives, and interviewing candidates. Human Resource Office personnel will advise, and assist managers in this effort and insure that the recruitment and placement system is operating within the parameters established by law and regulation. The availability of eligible employees who could be considered through merit placement or other in-service placement procedures does not prevent a decision to restructure a vacant position and fill it at a different grade level. Nor does it prevent a search outside the National Guard for and appointment of qualified and available persons.

## **7. Employment of Relatives.**

a. Title 5 Code of Federal Regulations, Section 310 (5 CFR 310), applies to both Dual Status and Non-Dual Status Technicians. Managers and supervisors may not employ, promote, or advocate (orally or in writing) the employment, promotion, or advancement of his/her own relative(s). This prohibition includes the review and approval of performance appraisals, within grade increases, incentive awards, classification actions and adverse or disciplinary actions.

b. Federal law does not prohibit relatives from working in the same agency, the same office, or even for each other. However, The Adjutant General may prohibit the employment of relatives in certain situations if he/she believes this prohibition on conflict of interest grounds or other reasons, which might be disruptive to work and interfere with orderly operation of the activity. If a technician supervises a relative, all authority and responsibility for personnel actions described above must be delegated in writing to a higher level supervisor or manager.

c. The term “relative” is defined as: mother, stepmother, mother-in-law, father, stepfather, father-in-law, spouse, sister, sister-in-law, half sister, brother, brother-in-law, half brother, daughter, stepdaughter, daughter-in-law, son, stepson, son-in-law, aunt, niece, uncle, nephew or first cousin.

## **8. Political Activity.**

The Hatch Act, as amended, governs the political activity of excepted and competitive government employees at the federal, state, and local levels (5 USC Section 7321, et seq.). Amended in 1993, the Act expanded rights of most employees to actively participate in political management and political campaigns. Generally, there are two categories of employees – employees of enforcement and intelligence-type agencies, e.g., FBI, DIA, NSA, etc. (“activities further restricted”) and all others (“activities less restricted”). “Less restricted” employees may not engage in political activity while on duty, in a government office, while wearing an official uniform, or while using a government vehicle. Employees and applicants are prohibited from soliciting, or requesting political recommendations and agency officials are prohibited from soliciting, requesting, considering or accepting such recommendations. The prohibition extends to all personnel actions described in 5 U.S.C. 2301(a)(2)(A)(i)-(ix), including appointments, promotions, disciplinary or corrective actions, details, transfers, reassignments, reinstatements, restoration, reemployment, performance evaluations, and decisions concerning pay, benefits, or awards.

## **9. Statutory Bar to Appointment.**

The obligation of men to register in the Selective Service System is imposed by the Military Selective Service Act, which establishes and governs the operations of the system. The law requires virtually all male U.S. citizens (regardless of where they live) to register within 30 days of their 18<sup>th</sup> birthday. Young men serving in the military on full-time active duty or attending the service academies do not have to register. In contrast, members of the Reserve and National Guard not on full-time active duty must register.

## **10. Dual Employment.**

a. Generally, Federal employees, civilian and military, are prohibited from receiving pay from more than one Federal Government source. However, in limited situations, an individual may have more than one Federal appointment, and may receive pay from more than one civilian job, i.e., only when:

(1) The jobs total no more than 40 hours of work a week (Sunday to Saturday-excluding overtime).

(2) There is an authorized exception. A technician on Leave Without Pay (LWOP) from one position may be paid for another position. However, paid leave counts toward the 40 hour per week limitation unless there is an authorized exception.

b. Technicians may not engage in outside (nonfederal) employment or activities that conflict with official duties and responsibilities.

c. Members of a Uniformed Service (Air Force, Army, Marines, Navy or Coast Guard) on active duty may not receive pay from another Government position, *except* during terminal leave or unless specifically authorized by law under 5 USC 5534(a).

d. Members of the National Guard and Army Forces Reserves may receive military pay and allowances in addition to pay from another Government position under 5 USC 5534.

#### **11. Veterans' Preference in Appointments.**

a. Use of veterans' preference for appointments made under the authority of 32 USC 709 is specifically prohibited. Veterans' preference procedures contained in Title 5 United States Code are not applicable to the National Guard Technician Program due to:

(1) The inherent military nature of the National Guard Technician program.

(2) Technicians are under the command and control of the State unless federalized.

b. This applies regardless of whether the position is dual status or non-dual status. Veteran preference determinations and points must not be used to determine the final order of eligibles on the referral certificate. Appointing officers will disregard veterans' preference when making selections.

#### **12. Reemployed Annuitants.**

a. Reemployed annuitants maybe hired on a temporary or permanent basis. Generally, the term "reemployed annuitants" refers to an annuitant, under either the Civil Service Retirement Systems (CSRS) or the Federal Employees Retirement System (FERS). There is no special appointing authority for a reemployed annuitant. Normally, the individual would be "reinstated."

b. Retired members of the Armed Forces have a right to be considered for federal civilian employment. Such consideration shall be extended equitably and in compliance with merit principles of open competition to avoid both the practice and appearance of preferential treatment. Appointment of a retired service member during the 180 days after retirement may only be made when specific requirements are met and fully documented per DoD Directive 1402.1. Reductions in uniformed service (military) retired pay previously required of military retirees were repealed by the National Defense Authorization Act for Fiscal Year 2000.

#### **13. Equal Employment Opportunity Policy.**

The California National Guard is committed to seek and correct or eliminate any personnel management policy, procedure or practice that may result in any disadvantages in employment or deny equality of opportunity to any group or individual on the basis of race, color, religion, sex, age or national origin. Appointing officials, managers and supervisors are responsible for ensuring that all qualified individuals have equitable opportunities to be hired, placed and advanced within the California National Guard technician workforce. Corrective action is required when a personnel action is determined to violate the provisions of law, regulation, directive, instruction or the local merit placement plan.

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